

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DARRELL J. OLIVER,	§
	§ No. 95, 2012
Defendant Below-	§
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 1007013246
Plaintiff Below-	§
Appellee.	§

Submitted: March 6, 2012

Decided: April 5, 2012

Before **HOLLAND, BERGER**, and **JACOBS**, Justices.

ORDER

This 5th day of April 2012, upon consideration of the appellant's opening brief, the State's motion to affirm, and the record below, it appears to the Court that:

(1) The defendant-appellant, Darrell Oliver, filed this appeal from the Superior Court's denial of his motion for correction of sentence pursuant to Superior Court Criminal Rule 35(a). The State has moved to affirm the judgment below on the ground that it is manifest on the face of Oliver's opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that Oliver pled guilty on December 7, 2010 to one count of Possession of a Deadly Weapon by a Person Prohibited

(PDWPP),¹ one count of Resisting Arrest,² and one count of Noncompliance with Bond.³ The Superior Court immediately sentenced him as follows: (i) eight years at Level V incarceration, to be suspended after serving three years for six years at Level IV home confinement or halfway house, to be suspended in turn after serving 6 months at Level IV for 18 months at Level III probation for PDWPP; (ii) a fine of \$1000 for Resisting Arrest; and (iii) a fine of \$1000 for Noncompliance with Bond. In August 2011, Oliver moved for a reduction of his sentence, which the Superior Court denied. On December 30, 2011, Oliver filed a motion for correction of sentence. The Superior Court denied that motion on February 6, 2012. This appeal followed.

(3) In his opening brief on appeal, Oliver contends that his sentence for PDWPP is illegal because the Superior Court sentenced him to eight years at Level V *to be suspended* after serving three years in prison for lesser degrees of supervision. According to Oliver, the Superior Court's sentence is illegal because Section 1448(e)(4) of Title 11⁴ prohibits suspension of any

¹ DEL. CODE ANN. tit. 11, § 1448(a)(3) (2007).

² DEL. CODE ANN. tit. 11, § 1257(b) (2007).

³ DEL. CODE ANN. tit. 11, § 2113(c)(1) (2007).

⁴ DEL. CODE ANN. tit. 11, § 1448(e)(1) sets forth the minimum mandatory sentences for a conviction of PDWPP depending upon the defendant's prior criminal record. Section 1448(e)(4) provides, "Any sentence imposed for a violation of this subsection shall not be subject to suspension and no person convicted for a violation of this subsection shall be eligible for good time, parole or probation during the period of the sentence imposed."

portion of a sentence imposed for PDWPP. Oliver appears to contend that, because the Superior Court was required to sentence him to a three year minimum mandatory term pursuant to 11 Del. C. § 1448(e)(1)(b), then a three-year year term of incarceration was the longest sentence that the Superior Court could impose.

(4) We find no merit to Oliver's argument. As the Superior Court correctly pointed out, Section 1448(e)(4) prohibits the Superior Court from suspending any period of the minimum mandatory term required to be imposed under Section 1448(e)(1), which in Oliver's case was a three-year minimum term. Section 1448(c) provides that PDWPP is a class D felony if the deadly weapon is a firearm, as it was in Oliver's case. Section 4205(b)(4) provides that the maximum sentence for a class D felony is eight years.⁵ Thus, given the particular circumstances of Oliver's case, the Superior Court was required to impose a minimum sentence of three years but could have sentenced Oliver to a maximum sentence of eight years. Pursuant to 11 Del. C. § 4205(e), the Superior Court was permitted to suspend any portion of Oliver's sentence in excess of the mandatory minimum sentence. Accordingly, the Superior Court was legally permitted

⁵ DEL. CODE ANN. tit. 11, § 4205(b)(4) (2007).

to sentence Oliver to eight years in prison to be suspended after serving three years.⁶

(5) Although the State moves to affirm the Superior Court's judgment below, counsel for the State points out a possible clerical error in the Superior Court's PDWPP sentence with regards to the six-year term imposed at Level IV. The State suggests that the Superior Court likely intended to impose a five-year term at Level IV. Because there is no transcript of the sentencing proceeding to establish the Superior Court's intention, we do not address this issue at this time. We note that if there is a clerical error in the sentence, the Superior Court may correct the clerical error at any time upon notice to the parties or upon motion filed by either party.⁷

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court denying Oliver's motion for correction of illegal sentence is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

⁶ DEL. CODE ANN. tit. 11, § 4205(e) (2007).

⁷ See Del. Super. Ct. Crim. R. 36 (2012) (providing that clerical mistakes in order may be corrected by the Court at any time).